APPENDIX A

IN THE DISTRICT COURT OF APPEAL
OF FLORIDA, THIRD DISTRICT

July Term, A.D. 1966

Tuesday, October 11, 1966

Case No. 66-330

MINNIE E. NASH,

Petitioner,

vs.

FLORIDA INDUSTRIAL COMMISSION
and THE STANLEY WORKS,

Respondents.

This cause having heretofore been submitted to the court on petition for Writ of Certiorari upon the transcript of record and briefs to review the order of the Board of Review of the Florida Industrial Commission, Unemployment Compensation Division, in said cause, bearing date of February 22, 1966, and the record having been considered, it is ordered that said petition be and the same is hereby denied.

A True Copy

ATTEST:

WILLIAM P. CARTER
Clerk District Court of Appeal,
Third District

APPENDIX B

FLORIDA INDUSTRIAL COMMISSION
UNEMPLOYMENT COMPENSATION BOARD OF REVIEW, TALLAHASSEE, FLORIDA 32304

Board of Review Decision No. 66-38
Re: Referee's Decision Docket No. 65-4494U

In the Matter of:

Social Security Account No. 409-24-6136
Claimant-Appellant

Employer No. -020817

DECISION

After due notice to the parties, this cause came on for final administrative disposition by the Board of Review at Tallahassee, Florida, on February 16, 1966, and was reviewed upon the record.

The decision of the Appeals Referee is affirmed.

FLORIDA UNEMPLOYMENT COMPENSATION BOARD OF REVIEW

J. D. WRIGHT, JR., Chairman
WALTER L. LIGHTSEY, Member
FRANK M. NELSON, JR., Member

Date Mailed to the Parties: February 22, 1966
(Form Fla. BR-7)

APPENDIX C

Referee's Decision Docket No. 65-4494-U

FLORIDA INDUSTRIAL COMMISSION
UNEMPLOYMENT COMPENSATION APPEAL
TRIBUNAL, TALLAHASSEE, FLORIDA

UNEMPLOYMENT COMPENSATION CLAIM
Appeal from Determination of Claims Examiner

In the Matter of:

Social Security Account No. 409-24-6136
(Claimant-Appellant)
Employer No. -020817

DECISION OF APPEALS REFEREE

After due notice to the parties, hearing was held at Miami, Florida, on December 22, 1965. The claimant and an employer representative appeared and testified. A field deputy of the Commission also appeared and testified. Both the claimant and the employer were represented by counsel.

ISSUES INVOLVED: Whether claimant's total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment, or other premises at which she is or was last employed, as provided in Section 443.06(4)(a)(b); and whether the benefit payments made to claimant shall be charged to the unemployment record of employer (-020817), as provided in Section 443.08(3)(a), Florida Statutes, 1963.

HISTORY OF CASE: Claimant filed an initial claim for unemployment compensation benefits effective December 20, 1964, and filed additional claims effective May 16, 1965, and effective July 25, 1965, then filed another initial claim on December 20, 1965. On November 15, 1965, the Claims Examiner made a determination disqualifying claimant for benefits for the period beginning January 31, 1965, because unemployed due to a labor dispute in active progress at the premises at which she is or was last employed. Claimant was notified of that determination by mail dated November 15, 1965, and appealed on November 20, 1965.

FINDINGS OF FACT: Claimant became employed with employer (-020817) in 1961 or 1962. Subsequent to undertaking this employment, appellant became a member of United Steel Workers of America, Local 5571, AFL-CIO. This organization was the collective bargaining agent for workers with employer (-020817). On February 2, 1963, the union and the employer entered into a collective bargaining agreement that was effective until January 30, 1965. Prior to January 30, 1965, the union and the employer negotiated with respect to a new collective bargaining agreement. Prior to January 30, 1965, impasse was reached in such negotiations. On January 30, 1965, union members held an election and voted to strike the employer. This dispute concerned terms or conditions of continued employment with the employer for workers. At 12:01 a.m. on January 31, 1965, a picket line was established at the premises of employer (-020817) at which claimant was employed. Appellant and other workers of her grade or class withheld their services from the employer or performed active picket duty or both. All workers of the employer did not withhold their services

when this labor controversy began and so the employer continued operations. On March 30, 1965, a union representative contacted the employer's plant manager and offered to return the striking workers unconditionally to their jobs. On April 5, 1965, an employer representative informed the union's staff representative that the employer would take some of the striking workers back but not others. On April 5, 1965, the picket line was removed from the employer's premises. On April 6, 1965, the employer began processing those striking workers who were being taken back to work, back to their jobs. Appellant was not one of the striking workers the employer would not permit to return. She was returned to work unconditionally. The employer refused to permit approximately fifty workers to return to their jobs. On April 6, 1965, through the union, these workers filed charges with the National Labor Relations Board regarding their not being returned to work. The relief sought in these charges included the workers being returned to their jobs and paid back pay for time which they had lost from work. Appellant went back to work on April 14, 1965. She worked until May 16, 1965, and then was laid off by the employer for "slow production." On June 17, 1965, claimant filed charges with the National Labor Relations Board alleging that the employer had discriminated against her by separating her from her job. The relief appellant sought with these charges included being reinstated on her job and paid back pay for time which she had lost from work. On October 5, 1965, the employer, voluntarily, recalled claimant to work. After October 5, 1965, claimant worked until December 17, when the employer again separated her from her job. Claimant was separated from her job on December 17, 1965, because of a plant shutdown, customary with the employer, for the Christmas and New

Year's holidays. Appellant will be recalled to work when the employer's plant resumes operations. As of the date of the hearing, December 22, 1965, the charges which claimant had filed with the National Labor Relations Board against the employer on June 17, 1965, were unresolved and pending, as were the charges filed on April 6, 1965, by those workers the employer would not return to their jobs.

Claimant's unemployment for the period beginning January 31, 1965, to April 14, 1965, was due to a labor dispute in active progress at the premises at which she was last employed, and she is disqualified for benefits for such period. Claimant is eligible for benefits without disqualification for all periods, for which she claimed benefits, from May 16, 1965, to June 17, 1965. The employer's experience rating account is chargeable with any benefits which might be paid in connection with this claim for the period beginning May 16, 1965, to June 17, 1965. Claimant's unemployment from June 17, 1965, to October 5, 1965, was due to a labor dispute in active progress at the premises at which she was last employed, and she is disqualifed from receiving benefits for such period. Claimant is eligible for benefits without disqualification for all periods for which she claimed benefits for the period beginning December 17, 1965, and so long as her unemployment after such date is due to a plant shutdown. The employer's experience rating account is chargeable with any benefits which might be paid in connection with this claim for the period beginning December 17, 1965, and thereafter for any benefits paid claimant as a result of her unemployment being due to the employer's plant shutdown on December 17, 1965.

REASONS FOR DECISION: The Florida Unemployment Compensation Law provides:

"443.06 Disqualification for benefits—An individual shall be disqualified for benefits:

"(4) For any week with respect to which the Commission finds that his total or partial unemployment is due to a labor dispute in active progress which exists at the factory, establishment or other premises at which he is or was last employed; provided, that this subsection shall not apply if it is shown to the satisfaction of the Commission that:

"(a) He is not participating in or financing, or directly interested in the labor dispute which is in active progress; provided, however, that the payment of regular union dues shall not be construed as financing a labor dispute within the meaning of this section; and

"(b) He does not belong to a grade or class of workers of which immediately before the commencement of the labor dispute there were members employed at the premises at which the labor dispute occurs any of whom are participating in, or financing, or directly interested in the dispute; provided, that if in any case separate branches of work which are commonly conducted as separate businesses in separate premises, or are conducted in separate departments of the same premises, each department shall, for the

purpose of this subsection be deemed to be a separate factory, establishment or other premises."

Here, it has been shown that claimant's unemployment from January 31, 1965, to April 14, 1965, was due to a labor dispute in active progress at the premises at which she was last employed. It has also been shown that she actively participated in such dispute by performing active picket duty or withholding her services from the employer, or both. In view of these factors, appellant is properly subject to disqualification for benefits under the labor dispute provisions of the Law for the period beginning January 31, 1965, to April 14, 1965.

The testimony presented in this instance shows that on June 17, 1965, appellant filed charges with the National Labor Relations Board against the employer because of her separation on May 16, 1965, seeking, among other things, reinstatement on her job and back pay for the time which she had lost from work. It has further been shown that these charges were unresolved and pending when claimant was recalled to work by the employer, voluntarily, on October 5, 1965. These charges being filed and being unresolved and pending as of the date appellant returned to work constitute a labor dispute in active progress at the premises at which she was last employed between claimant and the employer. Consequently, here, it should be deemed that any unemployment appellant experienced during the period beginning June 17, 1965, to October 5, 1965, is due to a labor dispute in active progress at the premises at which she was last employed and she participated in such dispute. Therefore, it should be held that appellant is disqualified for benefits for the period beginning June 17, 1965, to October 5, 1965.

As appellant was separated from her job on May 16, 1965, due to "slow production" and did not dispute such separation until June 17, 1965, it should be held that she is qualified for benefits for all periods for which she filed claims for the period beginning May 16, 1965, to June 17, 1965. Granted, there was a labor dispute in active progress at the employer's premises when claimant was separated from her job on May 16, 1965, (such dispute being the labor controversy manifested by the charges with the National Labor Relations Board filed on April 6, 1965, by those workers who were not returned to their jobs and those charges being unresolved and pending when claimant's employment was terminated on May 16, 1965). But appellant's becoming unemployed on May 16, 1965, was not due to this dispute.

Although the charges filed with the National Labor Relations Board on June 17, 1965, by claimant were unresolved and pending when she was separated from her job on December 17, 1965, since she was separated from her job on this occasion due to a plant shutdown and will be recalled to work when the plant begins operations after the shutdown, it should not be deemed that her unemployment after December 17, 1965, and so long as her unemployment is due to the plant shutdown, is due a labor dispute in active progress.

DECISION: The determination of the Claims Examiner is hereby modified so as to hold as follows: claimant is disqualified for benefits, because unemployed due to a labor dispute in active progress at the premises at which she is or was last employed, for the period beginning January 31, 1965, to April 14, 1965; claimant is eligible for benefits without disqualification for all pe-

riods, for which she claimed benefits, from May 14, 1965, to June 17, 1965; the experience rating account of the employer is chargeable with any benefits which might be paid in connection with this claim for the period beginning May 14, 1965, to June 17, 1965; claimant's unemployment from June 17, 1965, to October 5, 1965, was due to a labor dispute in active progress at the premises at which she was last employed, and she is disqualified from receiving benefits for such period; claimant is eligible for benefits without disqualification, for all periods for which she claimed benefits, for the period beginning December 17, 1965, and so long as her unemployment after such date is due to plant shutdown; the employer's experience rating account is chargeable with any benefits which might be paid in connection with this claim for the period beginning December 17, 1965, and thereafter for any benefits paid claimant as a result of her unemployment due to the employer's plant being shut down as of December 17, 1965; and, as modified, the Claims Examiner's determination is affirmed.

JAMES R. PARKS
Appeals Referee

Date Mailed Claimant and Employer: Jan 14 1966